

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 M) for Authorization to Sell its Kern
Facility Pursuant to Public Utilities Code
Section 851 and Executive Order D-44-01

Application 03-10-044
(Filed October 22, 2003)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE**

This Scoping Memo and Ruling establishes the scope, schedule, and procedure for this proceeding, consistent with the proposal of the Administrative Law Judge (ALJ) and the concurrence of the parties, as discussed at the January 8, 2004 prehearing conference (PHC) in this proceeding.

Procedural Background

This case has a rather complex and convoluted history. Pacific Gas & Electric (PG&E) initially requested permission to sell its Kern Facility, a non-operating gas-fired power plant and associated land, in Application (A.) 00-05-031, which was filed in May 2000. The erstwhile buyer for the facility was North American Power Group (NAPG), which was the high bidder in an auction process conducted by PG&E. Subsequent to the filing of PG&E's application, the legislature amended Pub. Util. Code § 377, and the Commission held that the amended statute barred the sale of the Kern Facility. Accordingly, the Commission dismissed PG&E's application in Decision (D.) 01-04-004.

Subsequently, in July 2001, Governor Gray Davis issued Executive Order D-44-01, which conditionally suspended § 377 to the extent it barred the transfer

of the Kern Facility to NAPG. In October 2001, the Commission issued D.01-10-002, which denied rehearing of D.01-04-004, closed the previous application proceeding, and directed PG&E to file a new application in compliance with the requirements of the Executive Order. PG&E filed the current application on October 22, 2003.

The City of Bakersfield (Bakersfield) and the Commission's Office of Ratepayer Advocates protested PG&E's current application. NAPG subsequently requested leave to intervene and to submit a response to Bakersfield's protest.

On November 25, 2003, the assigned ALJ issued a ruling requesting additional information from PG&E. PG&E provided the requested information on December 15, 2003. The assigned ALJ issued a ruling on December 23, 2003, granting NAPG's motion to intervene and to submit its response to Bakersfield's protest, identifying the issues raised by the parties, and setting forth a proposed process for adjudication. A PHC was held on January 8, 2004.

Issues

The parties have raised the following issues: (a) whether the sale of the Kern Facility is allowed under Pub. Util. Code § 377; (b) whether PG&E's application to sell the Kern Facility should be approved by the Commission, pursuant to Pub. Util. Code § 851; (c) what is the proper application of (or exemption from) the California Environmental Quality Act (CEQA) to the proposed sale; and (d) whether the price for the proposed sale is appropriate. PG&E has withdrawn its argument based upon Governor Davis' Executive Order D-44-01, which is no longer in effect.

Process

The assigned ALJ proposed a process for adjudication of these issues, with which the parties concurred. We adopt that process. First, the Commission will resolve, as a threshold matter, the question of whether the sale of the Kern Facility is allowed under Pub. Util. Code § 377. Consistent with the ALJ's ruling at the PHC, briefs on this issue are due on January 27, 2004.¹ No reply briefs will be accepted, and no hearings on this issue are needed. Following submission of briefs, the assigned ALJ will prepare a proposed decision that will be placed on the Commission's agenda.

If the Commission determines that the sale is barred by § 377, the proceeding would be completely resolved. If the Commission determines that the sale is permissible under § 377, then the remaining issues will be addressed, pursuant to a schedule and process to be determined by the assigned ALJ. That process would require that the Commission staff and assigned ALJ determine the appropriate CEQA treatment for the application, and that the parties be given the opportunity to litigate the substantive issues raised by the application, including ratepayer, community, and other public interests, pursuant to Pub. Util. Code § 851. At this stage, public participation hearings would be held in the vicinity of the Kern Facility. Evidentiary hearings on the § 851 issues may also be required.²

¹ The ALJ required electronic service of briefs no later than 4 pm. Hard copy service is not required. Normal rules for filing are applicable.

² The preliminary determination for this proceeding was that no evidentiary hearings were needed. If evidentiary hearings will be needed, a second Scoping Memo will be issued to change that determination and set forth a scope and schedule.

This application was preliminarily categorized as ratesetting in Resolution ALJ 176-3122 on October 30, 2003. We confirm that categorization. Any party who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this ruling. (See Rule 6.4.) As a ratesetting proceeding, the ex parte rules contained in Rule 7(c) of the Commission's Rules of Practice and Procedure apply to this proceeding.

The principal hearing officer for this proceeding shall be ALJ Peter V. Allen.

It is expected that this proceeding will be completed within 18 months from the filing of PG&E's application.³

Anyone who needs assistance with participation in this proceeding should make use of the resources on the Commission's web site, www.cpuc.ca.gov, or should contact our Public Advisor's Office, which is available to help parties understand how to participate in a proceeding, how to file a pleading, and to answer other questions about Commission procedure. The northern California office can be reached at 415-703-2074 or public.advisor@cpuc.ca.gov. The southern California office can be reached at 213-576-7055 or public.advisor.la@cpuc.ca.gov.

IT IS RULED:

³ While we anticipate that the proceeding will be completed within 18 months from the date PG&E initially filed its application, which was October 22, 2003, we note that PG&E's application was not actually complete until December 15, 2003, the date it filed its supplement to the application.

1. As a threshold matter, the Commission will initially address the issue of whether the sale of the Kern Facility is permissible under Pub. Util. Code § 377, as described above.

2. If the Commission determines that the sale of the Kern Facility is permissible under Pub. Util. Code § 377, then parties will be given the opportunity to litigate the other issues raised pursuant to Pub. Util. Code § 851, as described above.

3. Administrative Law Judge Peter V. Allen is the principal hearing officer for this proceeding.

4. The schedule and process for adjudicating this proceeding are as set forth above.

Dated January 26, 2004, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ PETER V. ALLEN

Peter V. Allen
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated January 26, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.